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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MARK S. ALFASSA, Plaintiff and Appellant, v. GENEVIEVE R. KEDDIS et al., Defendants and Respondents.	B287564 (Los Angeles County Super. Ct. No. BC605574)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cary Nishimoto, Judge. Affirmed.

Brian Gibson for Plaintiff and Appellant.

Jay S. McClaugherty and Michael E. McCabe for Defendants and Respondents.

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This is a personal injury case arising from a car collision. The collision occurred on December 26, 2013. The complaint was filed on December 29, 2015. The applicable two-year statute of limitations in Code of Civil Procedure section 335.1 (hereafter section 335.1) expired on December 28, 2015. The parties agreed to bifurcate for a court trial the question whether the action is barred by the statute of limitations. The court found the action was barred by the statute of limitations and dismissed the complaint. We affirm.

BACKGROUND

There is no reporter's transcript of the bench trial, but the court certified a settled statement pursuant to California Rules of Court, rule 8.137. We describe the pertinent evidence as summarized in the settled statement.

The collision occurred on December 26, 2013. Plaintiff Mark Alfassa noticed ringing in his ears within a few minutes of the accident. Plaintiff realized the ringing in his ears might be permanent about two weeks after the collision. Plaintiff knew the statute of limitations was two years. In response to a question from the court, plaintiff testified he first thought he might file a lawsuit in this case about four months after the collision. However, plaintiff first went to court to file a lawsuit on December 28, 2015.

Plaintiff went to the Torrance courthouse about 9:30 a.m. on December 28, 2015, to file his complaint and was told he had to file it at the Stanley Mosk Courthouse in downtown Los Angeles. He arrived at the Mosk courthouse at about 11:30 a.m. He purchased forms to file an unlimited civil action and began filling out the forms. He interacted with a man who appeared to be something like a process server over many hours, asking him

several times if he knew what people typically put for answers in several spots where plaintiff was unsure what to put. A little before 4:30 p.m., the man showed plaintiff the filing room, room 102. A gentleman there found out plaintiff had a fee waiver and told plaintiff fee waivers are done in room 106. Plaintiff told the gentleman this was his last day for the statute of limitation, and the gentleman replied "you're fine, you've got three minutes, and as long as you get the waiver stamped you're covered."

Plaintiff then ran to room 106 and slid the fee waiver over to the clerk. The clerk asked if the forms were complete. Plaintiff said he was checking the order on the fee waiver. The clerk told him if the forms were not complete, he needed to leave. He told the clerk this was the last day for his statute of limitation. The clerk again told him to leave. Plaintiff left, thinking there was virtually no chance of getting the clerk to not throw him out and that his best course of action was to come back the next morning and try to get a supervisor to backdate the forms. The next day, both the clerk in room 106 and her supervisor refused to backdate the fee waiver. Plaintiff filed the fee waiver and the complaint on December 29, 2015.

Plaintiff sued Genevieve R. Keddis, Ramzy Gundy and Kamila Gallas. Ms. Keddis drove the car that collided with plaintiff's van. Mr. Gundy owned the car. We are not told anything about Ms. Gallas. Counsel representing all three defendants filed an answer generally denying the complaint and asserting affirmative defenses, including as a first affirmative defense that the action was barred by the two-year statute of limitations of section 335.1.

At the bench trial, plaintiff argued Ms. Keddis had withdrawn her statute of limitation defense when she answered

form interrogatory number 15.1, and the court should apply the withdrawal of the statute of limitations defense to Mr. Gundy and find it binding against him. Defendants' counsel asserted the withdrawal had been a clerical error. The court found it would violate Mr. Gundy's constitutional rights if the court were to find him bound by Ms. Keddis's discovery response.

Plaintiff also argued the court should deem the complaint filed on December 28, 2015, because plaintiff gave the clerk his completed request to waive court fees on that date. The court noted that plaintiff had two years in which to file his lawsuit, and plaintiff knew both that he had a potential lawsuit four months after the collision and that his lawsuit had to be filed within two years. The court found no evidence of hardship prevented plaintiff from filing his lawsuit before December 28, 2015. The court also noted that plaintiff arrived at the Mosk courthouse at 11:30 a.m. yet he did not approach the clerk's window to file his request for a fee waiver until within minutes of 4:30 p.m. The court stated it did not understand how plaintiff spent his time such that he did not try to file his lawsuit until just minutes before the courthouse closed at 4:30 p.m. The court dismissed the lawsuit.

DISCUSSION

Plaintiff contends we should find as a matter of law that Ms. Keddis is bound by her withdrawal of the statute of limitation defense in an interrogatory response. We understand plaintiff's argument to be that Ms. Keddis waived her statute of limitation defense by failing to mention it in her interrogatory response. (Plaintiff does not assert on appeal the trial court erred by finding Mr. Gundy was not bound by Ms. Keddis's interrogatory response.)

The substantial evidence rule applies to the trial court's resolution of a claim of waiver. (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1053, superseded by statute on other grounds as stated in *Eller Media Co. v. City of Los Angeles* (2001) 87 Cal.App.4th 1217, 1219, fn. 3 [whether plaintiff waived time limits for government agency to approve application for development project]; *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 443 [whether party waived right to arbitration].) Thus, plaintiff's burden on appeal is to show there is no substantial evidence to support the trial court's implied finding that Ms. Keddis did not waive the statute of limitation defense.

The record does not include Ms. Keddis's interrogatory response. The settled statement does not include an express finding by the court concerning plaintiff's claim of waiver as to Ms. Keddis. It was plaintiff's obligation to present an adequate record for appellate review. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 ["It is well settled, of course, that a party challenging a judgment has the burden of showing reversible error by an adequate record."]; *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039 ["[i]t is [the plaintiff's] obligation as appellant to present a complete record for appellate review"].)

Absent an adequate appellate record, we presume the judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 ["[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' "]; see also *Foust v.*

San Jose Construction Co., Inc. (2011) 198 Cal.App.4th 181, 187 [a " ' "necessary corollary" ' " to the rule that the appellant has the burden of demonstrating error by providing an adequate record " ' "is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed" ' "].)

We do not know whether the trial court found the interrogatory response did not constitute a waiver; or whether the trial court found Ms. Keddis's answer asserting the statute of limitation as an affirmative defense preserved her right to prove the case was time-barred despite her interrogatory response; or whether the court found the failure to mention the statute of limitation defense in the interrogatory response was a clerical error. Any one of those findings would have supported the court's implied finding that Ms. Keddis did not waive the statute of limitation defense. Plaintiff has not demonstrated reversible error.

Next, plaintiff argues we should find as a matter of law the complaint was deemed to have been filed on December 28, 2015, when he submitted the fee request to the clerk. Plaintiff cites no authority in support of this argument. "In order to demonstrate error, an appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286–287.)

Plaintiff cites three cases that do not support his argument. Plaintiff's authorities establish that pleadings are deemed filed on the day they are submitted to the clerk for filing in the form required by law. (*Carlson v. Department of Fish & Game* (1998) 68 Cal.App.4th 1268, 1270 [complaint is deemed filed when it is

presented to the clerk for filing in the form required by state law]; *Rojas v. Cutsforth* (1998) 67 Cal.App.4th 774, 777-778 [a paper is deemed filed when it is deposited with the clerk with directions to file the paper]; *Tregambo v. Comanche M. and M. Co.* (1881) 57 Cal. 501, 506 [when demurrers were deposited with the clerk for filing, they were on file in the case, and clerk could not reject them days later for lack of filing fee].)

Here, it is undisputed that plaintiff did not present his complaint to the clerk for filing until December 29, 2015. The authorities cited by plaintiff hold that papers are deemed filed on the day they are presented to the clerk in the form required by law. Plaintiff presented his complaint to the clerk one day after the statute of limitation had expired.

The trial court considered plaintiff's evidence and arguments that, in effect, the statute of limitation should be equitably tolled for one day because the clerk in room 106 did not accept the fee waiver for filing which prevented plaintiff from filing his complaint on time. The court found plaintiff had no good excuse for failing to file his lawsuit on time because he had two full years to file it, he knew he had only two years, he decided four months after the collision that he had a potential claim, and he did not explain why, having arrived at the Mosk courthouse at 11:30 in the morning, he first approached the clerk's window only a few minutes before 4:30 p.m. We find substantial evidence supports the court's finding there was no evidence of hardship that prevented plaintiff from filing his lawsuit on time, and the court did not abuse its discretion by declining to equitably toll the statute of limitation.

DISPOSITION

The judgment of dismissal is affirmed. Respondents are to recover their costs of appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.